

**HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.2658 OF 2004.

Maharashtra Enterprises. ...Petitioner

V/s.

State of Maharashtra & Ors. ...Respondents

Shri N.V.Pradhan, with S.D.Khot, for petitioner

Shri A.S.Gadkari, APP for State.

**CORAM: A.M.KHANWILKAR, J
DATE : APRIL 1, 2005**

P.C. :-

1. This petition takes exception to the order passed by the Chief Judicial Magistrate, Sangli, dated November 18, 2003, on the application preferred by the petitioner for return of property, which order is confirmed by the Sessions Court, Sangli on May 31, 2005, which is also the subject matter of the challenge in this petition.

2. It is seen that the respondent Nos.2 and 3 have been duly served. But none appears for the said respondents.

3. After hearing Shri Nitin Pradhan, the counsel for the petitioner and Shri Gadkari, APP for the State and with their assistance, after going through record of

the petition, the position that emerges is that the subject property has been purchased by the petitioner for consideration. Petitioner has already parted with an amount of Rs.1,45,000/- for purchasing the said property. Even the Revision Court has had occasion to observe that the police ought to have handed over custody of the property to the petitioner in view of the said position on record. This is so because, neither the complainant nor the accused were able to show that they are the rightful owners of the said property. The said property has been purchased by the petitioner from respondent No.2 who in turn procured the same from respondent No.3 on credit. The respondent no.3 did not fulfil his liability. That will not affect the right of the petitioner who has purchased the said property by paying full consideration to the respondent No.2 and was in possession of the said property at the relevant time.

4. Viewed in this perspective, I see no basis to sustain the conclusion reached by the courts below though concurrent, as I find that the petitioner was the rightful owner of the property. Accordingly, this petition succeeds. Orders passed by the two courts below are set aside and instead, the application preferred by the petitioner before the Magistrate is

allowed.

5. Petition is disposed of accordingly.